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Respondent.

On March 15, 2010, Garcia filed an application with the Second Circuit for leave to file a successive motion for relief under 28 U.S.C. § 2255. On April 13, 2010, the Second Circuit issued a mandate denying Garcia’s application because his habeas petition was not final as of the date of his application. *See Whab v. United States*, 408 F.3d 116, 118-19 (2d Cir. 2005). The Court transferred the motion to me for “whatever further action the district court finds appropriate.”

Upon review of Garcia's application, I deem the claim raised by Garcia to be a new one. Garcia argues that the government failed to prove the type and quantity of drug involved in his offense beyond a reasonable doubt, as required by *Apprendi v. New Jersey*, 530 U.S. 466 (2000), before Garcia could lawfully be given a sentence in excess of 20 years. The rule announced in *Apprendi*, however, does not apply retroactively to § 2255 motions. *Coleman v. United States*, 329 F.3d 77, 90 (2d Cir. 2003). Accordingly, Garcia's claim is without merit and his petition, as supplemented, is dismissed.

So Ordered.

John Gleeson, U.S.D.J.

Date: July 29, 2010
Brooklyn, New York